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GMP #92

To: Environmental Health Managers
Health Directors

From: Randolph L. Gordon, M.D., M.P.H.
State Health Commissioner

Subject: Time Limits to Appeal Case Decisions

PURPOSE: The intent of this policy is to establish a time frame for filing requests for hearings to challenge agency case decisions under the *Sewage Handling and Disposal Regulations* (12 VAC 5-610 et seq.), the *Regulations Governing Application Fees for Construction Permits for Onsite Sewage Disposal Systems and Private Wells* (12 VAC 5-620 et seq.), the *Private Well Regulations* (12 VAC 5-630 et seq.), and the *Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings* (12 VAC 5-640 et seq.).

BACKGROUND: It has been a longstanding practice of the Virginia Department of Health to enforce time limits on the filing of requests for administrative hearings to challenge certain agency actions (case decisions). Some time limits are established in the *Code of Virginia* while others are contained in various regulations. Some confusion is currently resulting because these time limits vary among regulations, because they vary from case to case, and because in many cases, specific time limits have not been established. For instance, the *Code of Virginia* establishes a 30-day deadline for filing a request for a formal hearing before the Sewage Handling and Disposal Appeal Review Board, but the *Sewage Handling and Disposal Regulations* set no deadline for the appeal of the denial of an application for a sewage disposal system construction permit. The *Private Well Regulations* establish a 60-day time limit to appeal the denial of a permit. However, no time limit is given to appeal the voidance of a permit under those regulations.

With no established time limit for appeal, an applicant may choose to appeal a decision years after the decision was made. This presents several problems. From the applicant's viewpoint, appealing a decision that is years old potentially deprives him or her of the benefits of changes in regulation, policy, or technology which may overcome the original cause for denial. From the Department's standpoint, an appeal filed long after the actual decision requires defending or justifying a decision where there may no longer be personal knowledge or recollection of the facts in the case. Employees, for a variety of reasons including retirement,

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relocation, and death, often are not available to discuss or provide facts regarding a case decision when a long period of time has lapsed between the actual decision and an appeal. In many instances, such knowledge is beneficial or even crucial when reviewing and verifying the accuracy of field data. Even when an employee is available to participate in a hearing, his or her ability to recall the specific details of a decision fades with time.

This policy is necessary to reduce confusion surrounding the appeal process and to assure that applicants are provided accurate and current reviews of case decisions, including site conditions, options, and other pertinent details.

PROCEDURE: Effective immediately, it shall be the practice and the policy of the Department to enforce a 30-day time limit for the appeal of **all case decisions** unless a different time period is specifically established in the *Code* or in regulation. All requests for hearings must be in writing and the 30-day period shall begin on the date that the applicant receives notice of a case decision. This policy applies to requests for both informal and formal hearings. Proper accounting of this and all other time limits for appeals requires that the Department serve notice of all case decisions by certified mail (return receipt requested) or by hand delivery with appropriate documentation of the time and date of delivery.

Effective immediately, environmental health managers are directed to assure that all permit denials include a statement noting the thirty day time limit to file an appeal. Likewise, appealants denied a permit in an informal hearing must also be advised of the time limit to request a formal appeal.

Any applicant wishing to appeal a case decision in which the allotted time for filing has expired must file a new application with the appropriate filing fee. Special care should be taken in reviewing these files and performing additional field work as necessary to be sure that the applicant receives the benefits of any regulation or policy changes that may have occurred since the last case decision and to ensure that the Department's documentation is complete, accurate, and defensible. Any questions should be directed to the Division of Onsite Sewage and Water Services administrative staff *before* a decision is made.

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